

JOHORE REPORT.

[ORIGINAL CIVIL JURISDICTION]

MANNING, J.

May 24, 1941.

MOHAMED SAH BIN HAJI MOHAMED

(Plaintiff)

vs.

HAJI ARSHAT BIN HAJI MOHAMED

(Defendant).

[BATU PAHAT ORIGINATING SUMMONS 64 of 1940]

*Land—adverse possession—rectification of Register
in Land Office.*

Except in cases to which a specific statutory provision may apply, the Court has no power to order the removal from the Register in the Land Office of the name of a registered owner of land, by reason only of the adverse possession by another for a period of time sufficient to bar the owner's right of action for recovery of possession of his land.

ORIGINATING SUMMONS.

Barrett for plaintiff.

No appearance was entered by the defendant.

The material facts are set out in the following Judgment:—

Manning, J.—The facts in this case are as follows:—In March 1925 one Mohamed Sah lent \$200 to one Haji Arshat. The latter was at that time the owner of certain land and as security for the loan he deposited with Mohamed Sah the document of title to the land. He then disappeared and has not been heard of since. Mohamed Sah found in June 1925 that no one was in possession of the land. He therefore entered into possession and has been in possession until to-day. He has now taken out an originating summons asking for an order that the register be rectified by substituting his name for that of Haji Arshat as proprietor of the land.

2. The grounds put forward by the applicant are that he is in possession of the relevant document of title and that he has been in possession for over 12 years. Mr. Barrett was unable to point to any statutory provision to support the proposition that these grounds entitle the applicant to the relief asked for. Nor could he cite any authority. He referred

me to Innes on Registration of Title in the F.M.S. page 61. The passage is as follows:—

“Section 7 of the Regulation makes ‘adverse possession in another for the prescriptive period’ one of the grounds upon which a certificate of title may be challenged. It would seem to follow from this that a person who has been in adverse occupation of land registered in the name of another long enough for the registered owner's right of action against him to be barred by the ‘Limitation Enactment 1896,’ would be entitled to have the register rectified and his name placed upon it. If the Court found the occupant had been in such adverse possession it would presumably direct the register under section 74 of the Regulation to make the necessary entry. The making of such an order would seem to result from the fact that the person in occupation and with rights practically amounting to ownership would not be able to deal with the land unless he was registered.....”

The learned author does not commit himself definitely. Mr. Barrett was unable to say whether Section 7 of the Regulation is still law in the F.M.S. But he did not cite any similar provision in the Law of Johore; and even if he had, I would not deduce from it that a person in possession of land for over 12 years has a right to have the owner's name taken off the register and his own placed there instead.

3. The only provision in the Law of Johore which I have been able to find relating to adverse possession is section 5 (iv) of the Abolition of Old Titles Enactment (No. 18 of 1936). Under this subsection continuous possession for 10 years together with possession of the document of title entitles the occupant to the issue of a new title. But the document must be one to which the Enactment applies and the document possessed by the applicant does not satisfy this description. He could not therefore have availed himself of this provision when it came into force.

4. I have come to the conclusion that the applicant's claim cannot succeed on the grounds put forward. I think it would need a specific provision of the law to make adverse possession a ground for ordering the register to be rectified. There is no application before me to enforce a charge. If such an application is made it will then be time to consider the question whether, having regard to sections 63 and 68 of the Land Enactment, any charge can be created by the mere deposit of a document of title.

5. No order is made on this application. As the respondent did not appear, there will be no order as to costs.

No Order.